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September 4, 2008

BY E-FILING

The Honorable Mary Pat Thynge United States District Court for the District of Delaware 844 King Street Wilmington, DE 19801

Re: Roquette Frères v. SPI Pharma, Inc., et al.

C.A. 06-540 (GMS/MPT)

Dear Magistrate Judge Thynge:

In its letter of September 3, 2008 prior to tomorrow's teleconference, SPI mischaracterizes the substance and purpose of Dr. Brittain's August 5 test. SPI incorrectly asserts that Dr. Brittain's test "showed a non-infringing friability result," in an attempt to obtain further discovery of information it has long been aware of. The test was performed subsequent to receipt of SPI's expert reports in order to demonstrate that the friability values SPI's expert witnesses rely upon were the result of incorrect testing by SPI.

Contrary to the patent, SPI measured friability of its products using a tablet drum. On August 5, in reaction to statements made in SPI's expert rebuttal reports which contend that SPI's different friability measurements were the result of variations in sieving, Dr. Brittain performed SPI's incorrect friability test to show that SPI's different and inaccurate measurements resulted from its use of the wrong drum. The result of that test, which Roquette immediately produced, is unrelated to infringement because it does not perform the friability test required by the claims of the patent.

Well before the end of discovery, Dr. Brittain tested SPI's products for infringement, including measuring friability with an abrasion drum, which Dr. Brittain selected as the appropriate drum called for by the claims of the '777 patent. The details of those tests and the equipment used were identified in his notebook pages and shown in videos, which Roquette produced. The only different piece of equipment used in Dr. Brittain's subsequent test of August 5 was the tablet drum.

The Honorable Mary Pat Thynge September 4, 2008 Page 2 of 3

SPI's discovery requests are: (1) irrelevant to any affirmative defense or counterclaim that SPI has raised in this case; (2) cumulative of discovery already produced; (3) made only after the close of discovery; and are essentially moot. Accordingly, Roquette requests that SPI's belated demand for further discovery be denied.

(1) Dr. Brittain's Single Tablet Drum Test Is Irrelevant to Any of SPI's Asserted Defenses and Counterclaims in This Case

SPI's contention that Dr. Brittain's tablet drum test showed a "non-infringing friability result" is a mischaracterization of fact. To the contrary, Dr. Brittain confirmed in his deposition that using the tablet drum, as SPI did in its friability measurements, was not the test called for by the '777 patent:

So I don't think one reading this [the '777 patent] would think of using a tablet drum. I think they would be led to use an abrasion drum. (Brittain Dep. at 18:12-14, Exh. A hereto).

All of Dr. Brittain's infringement-related friability tests were conducted with an abrasion drum, which Dr. Brittain selected as the appropriate drum called for by the claims of the '777 patent and which he identified in his notebook pages, videos and initial expert report.

Thus, Dr. Brittain's subsequent tablet drum test intentionally was <u>not</u> the friability test ("Test I") recited in the claims of the '777 patent. Nor did Dr. Brittain conduct that test for any purpose related to his infringement analysis. Rather, Dr. Brittain explained that he conducted that test "[i]n response to some of the things I had read in [SPI's expert] rebuttal reports." (Brittain Dep. at 8:3-8, Exh. A hereto). SPI's expert rebuttal reports contend that the difference between SPI's and Dr. Brittain's measured friability values was caused by variations in sieving. Dr. Brittain then conducted the tablet drum test on August 5 to determine whether SPI's different measured friability value instead was caused by SPI's use of the wrong drum. Roquette produced Dr. Brittain's notebook pages relating to that tablet drum test three days later at the beginning of his deposition.

Contrary to SPI's suggestion made in the third bullet point on page 2 of its letter, SPI has **never** raised any question as to which drum should be used in the friability test in support of any claim of invalidity, nor has it raised that point in any interrogatory response, invalidity contention or expert report or expert testimony. Rather, as noted above, SPI's non-prior art invalidity defense has been directed exclusively to sieving.

(2) Roquette Has Produced Information That Identifies and Depicts All of the Equipment Used by Dr. Brittain in His Infringement Tests

The equipment used by Dr. Brittain in his infringement tests is identified and depicted in the documents and videos which Roquette produced more than four months ago. That equipment also is commercially available, if not already owned by SPI. Any physical inspection of such equipment would be cumulative to what has already been produced.

The Honorable Mary Pat Thynge September 4, 2008 Page 3 of 3

Both of SPI's technical experts, Drs. Masters and Davé, were able to opine in their rebuttal reports regarding SPI's friability data without ever inspecting or even viewing SPI's equipment. (See Masters Dep. at 41:12-15 and Davé Dep. at 78:8-79:1, Exhs B and C hereto) (indicating that neither expert has ever seen an ERWEKA friability device). SPI offers no reason why it now needs to inspect Dr. Brittain's equipment, which in any event has already been fully identified in writing and depicted in video.

(3) SPI's Requests for Information It Knew of Well Before Discovery Closed, But Requested Only After Discovery Closed, are Untimely

Discovery ended June 30, 2008. (D.I. 187). More than a month later, SPI made new discovery requests regarding Dr. Brittain's laboratory equipment. (SPI's Exh. A).

Prior to the close of discovery, SPI knew of each piece of equipment that Dr. Brittain used in conducting his tests pertaining to his opinion of infringement. Dr. Brittain's equipment was identified in his notebook pages, and shown in videos, each of which were produced to SPI on April 17, 2008.

SPI had ample opportunity to request information regarding that equipment in a timely fashion long before discovery closed and it offers no excuse for its delay.

Although SPI's request is without merit and untimely, Roquette is willing to make available the ERWEKA operating manual and certificates pertaining to the Gilson Ro-Tap device, and to permit inspection of the tablet drum used by Dr. Brittain in the August 5 test at Young and Thompson's Virginia office at a mutually agreeable date and time.

Respectfully

Julia Heaney

JH:ncf

cc: Dr. Peter Dalleo, Clerk (By hand delivery)

John W. Shaw (By e-mail)

Oren D. Langer (By e-mail)

2474829

EXHIBIT A

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Page 1
1
                   HARRY BRITTAIN
           BEFORE THE UNITED STATES DISTRICT COURT
3
                 FOR THE DISTRICT OF DELAWARE
     ROQUETTE FRERES,
 7
                                     : Civil Action No.
               Plaintiff,
                                     : 06-540 (GMS/MPT)
          VS.
     SPI PHARMA, INC., DRYTEC LTD., :
10
     ANHYDRO U.K. LTD., DRYTEC
     CONTRACT PROCESSING LTD., and :
11
12
     ANHYDRO HOLDING A/S,
13
                Defendants.
14
15
16
17
            VIDEOTAPED DEPOSITION OF HARRY BRITTAIN
18
19
20
                                 Washington, D.C.
21
                                 Friday, August 8, 2008
22
23
     REPORTED BY:
24
         SARA A. WICK, RPR, CRR
25
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	Page 2		Page 3
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1	HARRY BRITTAIN	2	APPEARANCES (continued):
2	Videotaped deposition of HARRY BRITTAIN, called	3	ATTEARANCES (continuos).
3	for examination pursuant to Notice of Deposition, on	4	BRIAN P. MURPHY, ESQ.
₫	Friday, August 8, 2008, in Washington, D.C., at the	- - 5	OREN D. LANGER, ESQ.
5	offices of Morgan, Lewis & Bockius LLP, 1111	5	Morgan, Lewis & Bockius LLP
б	Pennsylvania Avenue Northwest, at 9:37 a.m. before	7	101 Park Avenue
7	SARA A. WICK, a Notary Public in and for the		New York, New York 10178
8	District of Columbia, when were present on behalf of	8	
9	the respective parties:	9	212-309-2108
10		10	bmurphy@morganlewis.com
11		11	olanger@morganlewis.com
12		12	On behalf of Defendant SPI Pharma, Inc.
13	<u> </u>	13	The Vide Country
14		14	ALSO PRESENT: Larry Flowers, Video Operator
15		15	New Age Control of the Control of t
116		16	79.00
1-		17	## ## ## ## ## ## ## ## ## ## ## ## ##
18		18	
11	On behalf of Plaintiff	19	
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2:	1.	21	
2:	2	22	
2	3	23	
2	4 continued	24	
2	5	25	
	TSG Reporting - Worldwide 877-702-9580		TSG Reporting - Worldwide 877-702-9580
-	Page 4		Page 5
;	HARRY BRITTAIN	1 1	HARRY BRITTAIN
1	PROCEEDINGS	2	reporter please swear in the witness.
- 4	VIDEO OPERATOR: This is the start of tape	3	Whereupon,
- 1			
	labeled 1 of the videotaged deposition of Dr. Harry	4	HARRY BRITTAIN
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	Page 6	*	Page 7
1	HARRY BRITTAIN	1	HARRY BRITTAIN
2	A My background is in physical chemistry,	2	Q And those two reports reflect all of the
	physical characterization of solid materials.	3	opinions that you intend to give in this case at the
4	Q All right. Any other areas of expertise	4	time of trial; right?
	that you'd like to put on the record? 09:36:56	5	A Well, they certainly reflect all the 09:38:12
-	A I certainly have expertise in	6	opinions I have developed to date. What happens at
	pharmaceutical formulations, characterization of	7	trial, I have no way of knowing.
	bulk drug substances.	8	Q But as of today, is it correct that your
9	Q All right. You've been retained as an	9	written reports reflect the opinions that you've
10	expert witness by Roquette Freres; right? 09:37:18	10	developed and intend to give at trial? 09:38:29
11	A Yes, I have.	11	A As far as I know, yes.
12	Q And when were you first retained?	12	Q So there's nothing — if there's something
13	A I don't remember the exact date.	13	that's not contained in your report, you're not
14	Q Approximate month or year?	14	going to give an opinion on it; correct?
15	A Probably some time last year, maybe the 09:37:34	15	A Not necessarily. Everything depends upon 09:38:44
16	middle of the year. I really don't remember the	16	the nature of questions which are posed to me.
17	month.	17	Q Is there anything you're aware of today
18	Q Some time in 2007?	18	right now that's not in your report that you would
19	A I believe so.	19	expect to give an opinion on at trial?
20	Q And you have submitted two expert reports 09:37:53	20	A It could happen, yes. 09:39:00
21	in this case; is that correct?	21	Q No, I mean specifics. Are you aware of
22	A Yes, I have.	22	anything right now?
23	Q And those reports are signed by you;	23	A Well, I'm aware of one specific, let's
24	right?	24	say, set of observations that I've made recently.
25	A Yes, they are. 09:38:03	25	Q And could you, please, describe that for 09:39:15
	TSG Reporting - Worldwide 877-702-9580		TSG Reporting - Worldwide 877-702-9580
	Page 8		Page 9
1	HARRY BRITTAIN	1	HARRY BRITTAIN
2	me?	2	Q And you don't have any documents
3	A Yes. In response to some of the things I	3	reflecting that work here today, do you?
4	had read in rebuttal reports, last week - no, early	4	A I don't personally, no.
5	this week, in fact, I conducted some additional 09:39:41	1	MR. RIGLER: We do. 09:41:03
6	experimentation because I was rather perplexed by	6	MR. MURPHY: What does that mean?
7	some of the things I had read and learned, something	7	MR. RIGLER: We have the notebook entry
8	very interesting.	8	for the experiment.
9	~	9	MR. MURPHY: Can I have them, please?
10		10	
11		11	
		12	**
12		113	S IVIK KILTI.MK: LEES STAV ON UIE TECORU 101
12 13		1	
13	Q Have you supplemented any of your reports?	14	one minute, please.
13 14 15	Q Have you supplemented any of your reports? A No. 09:40:17	14	one minute, please. VIDEO OPERATOR: We're still on. 09:41:28
13 14 15 16	Q Have you supplemented any of your reports? A No. 09:40:17 Q What was the interesting thing that you	14 15 16	one minute, please. VIDEO OPERATOR: We're still on. 09:41:28 MR. RIGLER: Jeffrey, I'm not sure that
13 14 15 16	Q Have you supplemented any of your reports? A No. 09:40:17 Q What was the interesting thing that you learned?	14 15 16 17	one minute, please. VIDEO OPERATOR: We're still on. 09:41:28 MR. RIGLER: Jeffrey, I'm not sure that these pages have been Bates numbered even. So we
13 14 15 16 17	Q Have you supplemented any of your reports? A No. 09:40:17 Q What was the interesting thing that you learned? A Well, I believe I have uncovered the	14 15 16 17	one minute, please. VIDEO OPERATOR: We're still on. 09:41:28 MR. RIGLER: Jeffrey, I'm not sure that these pages have been Bates numbered even. So we might hand Bates number them so that we'll have a
13 14 15 16 17 18	Q Have you supplemented any of your reports? A No. 09:40:17 Q What was the interesting thing that you learned? A Well, I believe I have uncovered the reason why the friability values measured by SPI	14 15 16 17 18	one minute, please. VIDEO OPERATOR: We're still on. 09:41:28 MR. RIGLER: Jeffrey, I'm not sure that these pages have been Bates numbered even. So we might hand Bates number them so that we'll have a record for identification.
13 14 15 16 17 18	Q Have you supplemented any of your reports? A No. 09:40:17 Q What was the interesting thing that you learned? A Well, I believe I have uncovered the reason why the friability values measured by SPI were so low compared to the friability values I 09:40:3	14 15 16 17 18 19 7 20	one minute, please. VIDEO OPERATOR: We're still on. 09:41:28 MR. RIGLER: Jeffrey, I'm not sure that these pages have been Bates numbered even. So we might hand Bates number them so that we'll have a record for identification. MR. SNAY: It's correct, they have not 09:41:42
13 14 15 16 17 18 20 23	Q Have you supplemented any of your reports? A No. 09:40:17 Q What was the interesting thing that you learned? A Well, I believe I have uncovered the reason why the friability values measured by SPI were so low compared to the friability values I 09:40:3' obtained on comparable Mannitol materials.	14 15 16 17 18 19 7 20 21	one minute, please. VIDEO OPERATOR: We're still on. 09:41:28 MR. RIGLER: Jeffrey, I'm not sure that these pages have been Bates numbered even. So we might hand Bates number them so that we'll have a record for identification. MR. SNAY: It's correct, they have not 09:41:42 been Bates numbered, and I can hand-enter them.
13 14 15 16 17 18 20 21	Q Have you supplemented any of your reports? A No. 09:40:17 Q What was the interesting thing that you learned? A Well, I believe I have uncovered the reason why the friability values measured by SPI were so low compared to the friability values I 09:40:3' obtained on comparable Mannitol materials. Q This information that you just described	14 15 16 17 18 19 20 21	one minute, please. VIDEO OPERATOR: We're still on. 09:41:28 MR. RIGLER: Jeffrey, I'm not sure that these pages have been Bates numbered even. So we might hand Bates number them so that we'll have a record for identification. MR. SNAY: It's correct, they have not 09:41:42 been Bates numbered, and I can hand-enter them. MR. MURPHY: Why don't you give me one
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6 (Exhibit 39 identified.) 7 BY MR. MURPHY: 8 Q Dr. Brittain, I've handed you now what 9 we've marked as Defendant's Exhibit 39. Can you, 10 please, take your time, take a moment to look 09:5242 11 through it and confirm that, in fact, this is a copy 12 of your notebook entries on the experiments that you 13 performed in this case on SPT Pharma's Manogem EZ 14 and Mannitol HS products. 15 A Yes, yes, this is a copy of my research 09:55:14 16 notebook. 17 Q All right. So if you could, let's keep in 18 froat of you both of these ethibits since we now 19 have the—all of the entries from your notebook, 22 Bates numbered RF 2014, at the top, you've 23 at least as of today. And looking at page 1 in 09:55:24 24 Defendant's Exhibit 39, Con you've 25 O and you order enter that claim 1 of the 09:55:47 26 Q And you reference Mannogem EZ lot 2635-CPC 09:53:47 27 TSG Reporting - Worldwide 877-702-9580 Page 16 Page 17 Page 16 Page 17 Page 17 Page 17 Page 16 Page 16 Page 17 Page 17 Page 16 Page 16 Page 16 Page 17 Page 17 Page 17 Page 17 Page 18 Page 19 Page 19 Page 19 Page 10 Page 10 Page 10 Page 17 Page 10 Page 10 Page 10 Page 10		Page 14		Page 15
2 then, a copy of your notehook with experiments 3 entries from this case previously provided by 4 counsel for Requeste, Bates numbered RP2012 through 5 RP2037.	1	HARRY BRITTAIN	1	HARRY BRITTAIN
3 contrise from this case previously provided by 4 counsel for Roquette, Bates numbered RT2012 through 5 RT2037. 6 (Exhibit 39 idendified.) 7 BYMR MURPHY: 8 Q Dr. Brittain. I've handed you now what 10 please, take your time, take a moment to look 11 please, take your time, take a moment to look 12 of your notbook certris on the experiments that you 13 performed in this case on SPI Pharmat's Mannegem EZ 14 and Mannital HS products. 15 A Yes, yes, finis is a copy of my research 09:53:14 16 nonbook. 17 Q Alf right. So if you could, let's keep in 18 front of you both of these exhibits since we now 19 have the - all of the entrise from your notebook, 20 at least so of today. And looking at page 1 in 09:53:24 21 Defondant's Exhibit 39, page 1 of your notebook, 22 at written "material reselved"; carreet? 23 written "material reselved"; carreet? 24 A Yes. 25 Q And you reference Mannegem EZ lot 2635-CPC 09:53:47 TSG Reporting - Worldwride 877-702-9580 Page 16 HARRY BRITTAIN 2 Q And you did that as a point of reference 3 for the tests that you were going to conduct; right? 4 A Yes. 5 Q And isn't it correct that claim 1 of the 09:55:01 6 patent doesn't say anything about an abrussion drum or a table trum? 6 A It does not have those specific records in 3 it, no. 10 Q And in fact, the entire '777 patent does 09:55:21 11 not have any reference to an abrasian drum or a table trum? 13 A I don't recall it saying those words, no. 14 Q In fact, it doesn't say anything about the type of drum to be used for the friability test of the proving those words, no. 15 Q In fact, it doesn't sup anything about the type of drum to be used for the friability test of the proving those words, no. 16 Q Okay, Let me hand you a copy of the patent doesn't say anything about the 20 contain a reference to the TAP friability test of contain a reference to the Tarb finishity test of contain a reference to the transition drum of the patent on the proving the patent of the proving those words, no. 17 Q Okay, Let me hand you a copy of the 20 patent in s	ļ .			
5 RP2037. 69:52:18 6 (Exhibit 39 identified.) 7 A Yes. 9 And you received that material on February 69:54:10 (1) 6 (1) 7 A Yes. 9 And you received that material on February 69:54:10 (1) 7 A Yes. 9 And you received that material on February 69:54:10 (1) 7 A Yes. 9 A Yes, yes, this is a copy of the parent claim to february 69:54:12 (1) 7 A Yes, yes, this is a copy of my research 69:53:42 (1) 7 A Yes, yes, this is a copy of my research 69:53:42 (1) 7 A Yes, yes, this is a copy of my research 69:53:42 (1) 7 A Yes, yes, this is a copy of my research 69:53:42 (1) 7 A Yes, yes, this is a copy of my research 69:53:42 (1) 7 A Yes, yes, this is a copy of my research 69:53:42 (1) 7 A Yes, yes, this is a copy of my research 69:53:42 (1) 7 A Yes, yes, this is a copy of my research 69:53:42 (1) 7 A Yes, yes, this is a copy of my research 69:53:42 (1) 7 A Yes, 1 See Indian 19 A Yes, 1 Yes, 1 See Indian 19 A Yes, 1 S	3	· • • • • • • • • • • • • • • • • • • •	ļ.	
6 (Exhibit 39 identified.) 7 BY MR. MURPHY: 7 A Yes. 8 Q And that's the same material that you used 9 we've marked as Defendant's Exhibit 39. Can you, 10 please, take your time, take a moment to look 09:52:42 11 through it and confirm that, in fact, this is a copy 12 of your notebook entries on the experiments that you 13 performed in this case on SFP Pharma's Mananogem EZ 14 and Mannitol HS products. 15 A Yes, yes, this is a copy of my research 09:53:14 16 notebook. 17 Q All right. So if you could, let's keep in 16 front of you both of these chibits since we now 19 have the — all of the entries from your notebook, 20 at least as of today. And looking at page 1 in 99:53:24 21 Eledendar's Exhibit 39. Can you, 22 Bates numbered RF 2014, at the top, you've 23 written "material received"; correct? 24 A Yes. 25 Q And you reference Mannogem EZ tot 2635-CPC 09:53:17 26 TSG Reporting - Worldwide 877-702-9580 Page 1 6 1 HARRY BRITTAIN 2 Q And you did that as a point of reference for the tests that you were going to conduct; right? 4 A Yes. 5 Q And so will it correct that claim 1 of the 09:55:01 patent on the vary on the patent in sour notebook; correct? 1 HARRY BRITTAIN 2 Q And you did that as a point of reference for the tests that you were going to conduct; right? 3 A I door trecall it saying those words, no. 10 Q And in fact, the entire '777 patent does on it, in the '777 patent does on a brasion drum or a tablet drum; right? 1 A I door trecall it asying those words, no. 10 Q I have the entire '777 patent does on the words of the patent in suit in your hands. We've marked it again 09:55:11 not have any reference to the that paragraph, and type of drum to be used for the friability test on the patent in the '777 patent does on the patent in suit in your hands. We've marked it again 09:55:11 not have any reference to the the hours	4	counsel for Roquette, Bates numbered RF2012 through	4	A That is correct.
8 PMR. MURPHY: 8 Q Dr. brittain, I've handed you now what 9 we've marked as Defendant's Exhibit 39. Can you, 10 piense, take your time, take a moment to look	5	RF2037. 09:52:18	5	Q And you received that material on February 09:54:00
8 Q And that's the same material that you used 9 we've marked as Defendant's Exhibit 39. Car you, 10 please, take your time, take a moment to look 99:52:42 11 through it and confirm that, in fact, this is a copy 12 of your notebook entries on the experiments that you 13 performed in this case on STP Tharma's Mannogen EZ 14 and Mannitol HS products. 15 A Yes, yes, this is a copy of my research 09:53:14 16 notebook. 17 Q All right. So if you could, let's keep in 18 front of you both of these exhibits since we now 19 have the — all of the entries from your notebook, 19 have the — all of the entries from your notebook, 20 at least as of today. And looking at page 1 in 09:53:14 22 Bates numbered RF 2014, at the top, you've 23 written "material received"; correct? 24 A Yes. 25 Q And you reference Mannogem EZ tot 2635-CPC 09:53:47 26 TSG Reporting - Worldwide 877-702-9580 Page 16 1 HARRY BRITTAIN 2 Q And you did that as a point of reference 3 for the tests that you were going to conduct; right? 4 A Yes. 5 Q And isn't it correct that claim 1 of the 09:55:01 6 patent doesn't say anything about an abrasion drum or a tablet drum; right? 3 A I does not have those specific records in 10 to 10	6	(Exhibit 39 identified.)	6	
9 for your experiment earlier this week on August 5th 10 pleasa, take your time, take a moment to look 09:52:42 11 through it and confirm that, in fact, this is a copy 12 of your notebook entries on the experiments that you 13 performed in this case on SPI Pharma's Mannogem EZ 14 and Mannitol HS products. 15 A Yes, yes, this is a copy of my research 09:53:14 16 notebook 17 Q All right. So if you could, let's keep in 18 front of you both of these exhibits since we now 19 have the - all of the entries from your notebook 10 Defendant's Exhibit 39 11 right? 12 A Yes, 23 written "material received"; correct? 24 A Yes. 25 Q And you reference Mannogem EZ lot 2635-CPC 26 A Yes, 27 A Yes, 28 A Yes, 29 So you've basically cut and pasted claim 1 1 HARRY BRITTAIN 2 Q And you did that as a point of reference 3 A I does not have those specific records in 4 A Yes, 5 Q And in fact, this is a copy of the patent doesn't say anything about an abrasion drum or a tablet drum; right? 10 A I don't recall it saying those words, no. 11 Time The patent that you were febring to the patent in the true; right? 12 A Yes, 3 A I don't recall it saying those words, no. 4 Q In fact, it doesn't say anything about the type of drum to be used for the friability text 09:55:48 17 A That is correct. 18 A Yes, Isave. 19 Q And whan I say 'ingtent dee of the patent in suit, which is U.S. Patent No. 57377; 09:54:44 19 Time The patent in suit, which is U.S. Patent No. 57377; 09:54:44 15 Trom the patent in the	7	BY MR. MURPHY:	7	A Yes.
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through it and confirm that, in fact, this is a copy of your notebook entries on the experiments that you and Mannitol HS products. A Yes, yes, this is a copy of my research 09:53:14 fon notebook. A Yes, yes, this is a copy of my research 09:53:14 fon the patent of these exhibits since we now of the exhibits an exhibit since we now at least as of today. And looking at page 1 in 09:53:24 Defendant's Exhibit 39, page 1 of your notebook, and we're under the entry that you made on February 6th, 2008, you've also 09:54:3 fright? A Yes, I ave. Q And when I say "patent," I'm referring to the patent in suit, which is U.S. Patent No. 573777; 09:54:44 right? A Yes. Q And you reference Mannagem EZ lot 2635-CPC 09:53:47 TSG Reporting - Worldwide 877-702-9580 Page 16 Page 16 Page 16 Page 17 HARRY BRITTAIN Q And you did that as a point of reference for the tests that you were going to conduct; right? A Yes. Q And isn't it correct that claim 1 of the 09:55:01 patent doesn't say anything about an abrasion drum or a tablet drum? A I don't recall it saying those words, no. Q In fact, it doesn't say anything about the type of drum to be used for the friability test type of drum to be used for the friability test type of drum to be used for the friability test type of drum to be used for the friability test anywhere in the "T77" patent fright? A I'm not 100 percent sure. It's possible that the reference to the abrasion drum, but I contain a reference to the abrasion drum, but I contain a reference to the abrasion drum, but I contain a reference to the barvasion drum, but I contain a reference to the abrasion drum, but I contain a reference to the abrasion drum, but I contain a reference to the abrasion drum, but I contain a reference to the abrasion drum, but I contain a reference to the abrasion drum, but I contain a reference to the abrasion drum, but I contain a reference to the abrasion drum, but I contain a reference to the abrasion drum, but I contain a reference to the abrasion drum, but I contain a reference to the	9	we've marked as Defendant's Exhibit 39. Can you,	9	for your experiment earlier this week on August 5th
of your notebook entries on the experiments that you 13 performed in this case on SPI Pharma's Mannagem EZ 14 and Mannich BS products. 15 A Yes, yes, this is a copy of my research 09:53:14 16 notebook. 17 Q All right. So if you could, let's keep in 18 front of you both of these exhibits since we now 19 have the — all of the entries from your notebook, 20 at least so of today. And looking at page 1 in 99:53:24 21 Defendant's Exhibit 39, page 1 of your notebook, 22 Bates numbered RF 2014, at the top, you've 23 at least so of today. And looking at page 1 in 99:53:24 24 A Yes. 25 Q And your efference Mannagem EZ lot 2635-CPC 09:53:47 TSG Reporting - Worldwide 877-702-9580 Page 16 1 HARRY BRITTAIN 2 Q And you did that as a point of reference 3 for the tests that you were going to conduct; right? 4 A Yes. 5 Q And you did that as a point of reference 3 for the tests that you were going to conduct; right? 4 A Yes. 5 Q And isn't it correct that claim 1 of the 09:55:01 6 patent doesn't say anything about an abrasion drum or a tablet drum? 8 A It does not have those specific records in 10 Q And in fact, the entire '777 patent does 09:55:11 10 Q And in fact, the entire '777 patent does 09:55:12 11 tothave any reference to an abrasion drum or a tablet drum; 12 tablet drum; right? 3 A I don't recall it saying those words, no. 14 Q In fact, it doesn't say anything about the 10 type of drum to be used for the friability test 10 type of drum to be used for the friability test 10 type of drum to be used for the friability test 10 type of drum to be used for the friability test 10 type of drum to be used for the friability test 10 type of drum to be used for the friability test 10 type of drum to be used for the friability test 10 type of drum to be used for the friability test 10 type of drum to be used for the friability test 10 type of drum to be used for the friability test 10 type of drum to be used for the friability test 10 type of drum to be used for the friability test 10 type of drum to be	10	please, take your time, take a moment to look 09:52:42	10	of 2008, as reflected in Defendant's Exhibit 38; 09:54:12
13 performed in this case on SPI Pharma's Mannogem EZ 14 and Mannitol JRS products. 15 A Yes, see, this is a copy of my research 09:53:14 16 notebook. 17 Q All right. So if you could, let's keep in 18 front of you both of these exhibits since we now 18 A Yes, I have. 19 have the — all of the entries from your notebook, 21 right? 20 at least as of today. And looking at page 1 in 09:53:24 21 Defendant's Exhibit 39, page 1 of your notebook 22 written "material received"; correct? 22 Bates numbered RF 2014, at the top, you've 22 written "material received"; correct? 23 written "material received"; correct? 24 A Yes. 25 Q And you reference Mannogem EZ lot 2635-CPC 09:53:47 26 TSG Reporting - Worldwide 877-702-9580 Page 1 6 Page 1 6 Page 1 7 1 HARRY BRITTAIN 2 Q And you did that as a point of reference 6 for the tests that you were going to conduct; right? 4 A Yes. 5 Q And sin't it correct that claim 1 of the 09:55:01 patent doesn't say anything about an abrasion drum or a tablet drum? 8 A It does not have those specific records in 19 it, no. 10 Q And in fact, the entire '777 patent does 09:55:12 in not have any reference to an abrasion drum or a tablet drum; right? 13 A I don't receil it saying those words, no. 14 Q In fact, it denset't say anything about the type of drum to be used for the friability test of the patent in suit, which is U.S. Patent No. 573777; 09:54:44 TSG Reporting - Worldwide 877-702-9580 Page 1 7 HARRY BRITTAIN 2 Q So Dr. Brittain, you have a copy of the patent in suit in your hands. We've marked it again 09:56:59 10 Q And in fact, the entire '777 patent does 09:55:12 in the helps you, if you start about line 22. A Yes. Q Is that what you were referring to in your previous answer? 15 Q In fact, it denset's ay anything about the type of drum to be used for the friability test of the patent in suit in the reference to the abrasion drum, but I contain a reference to the abrasion drum, but I contain a reference to the abrasion drum, but I contain a reference to the abrasion drum, but I con'	11	through it and confirm that, in fact, this is a copy	11	right?
14 and Mannitol HS products. 15 A Yes, yes, this is a copy of my research 09:53:14 16 notebook. 17 Q All right. So if you could, let's keep in 17 right? 18 front of you both of these erthibits since we now 18 have the — all of the entries from your notebook, 20 at least as of today. And looking at page 1 in 09:53:24 21 Defendant's Exhibit 39, page 1 of your notebook 21 right? 22 Bates numbered RF 2014, at the top, you've 22 Bates numbered RF 2014, at the top, you've 22 A Yes. 23 written "material received"; correct? 23 written "material received" correct? 24 A Yes. 25 Q And you reference Mannagem EZ lot 2635-CPC 09:53:47 TSG Reporting - Worldwide 877-702-9580 Page 16 For the tests that you were going to conduct; right? 4 A Yes. 26 Q And isn't it correct that claim 1 of the 09:55:01 patent doesn't say anything about an abrasion drum or a tablet drum; right? 4 A It does not have those specific records in 19 it, no. 9 A I don't recall it saying those words, no. 19 Q In fact, it doesn't say anything about the type of drum to be used for the friability test 20 don't know that for sure. 09:55:48 that the reference to the abrasion drum, but I ont have any reference to the abrasion drum, but I ont in a reference to the abrasion drum, but I ont in a reference to the abrasion drum, but I ont in a reference to the abrasion drum, but I ont sure about that. It doesn't say anything about an abrasion drum, but I ont sure about that. It doesn't say anything about the type of drum to be used in the Erweka friability test 21 anywhere in the '777 patent doesn't say anything about the type of drum to be used for the friability test 22 and friability test 23 anything about the type of drum to be used in the Erweka friability test 24 anywhere in the '777 patent for sure. 09:55:48 that have you were referring to in your previous answer? A Yes. 1 The thing the patent claim on that paragraph, and in the paragraph, there is no reference to any particular type of drum to be used in the Erweka friability test 25 anywhere in the '777 pate	12	of your notebook entries on the experiments that you	12	A That is correct.
15 A Yes, yes, this is a copy of my research 09:53:14 16 notebook. 17 Q All right. So if you could, let's keep in 18 front of you both of these exhibits since we now 19 have the - all of the entries from your notebook, 20 at least as of today. And looking at page 1 in 09:53:24 21 Defendant's Exhibit 39, page 1 of your notebook 22 Bates numbered RF 2014, at the top, you've 23 avritten "material received"; correct? 24 A Yes. 25 Q And you reference Mannogem EZ lot 2635-CPC 09:53:47 26 TSG Reporting - Worldwide 877-702-9580 Page 16 1 HARRY BRITTAIN 2 Q And you did that as a point of reference 3 for the tests that you were going to conduct; right? 4 A Yes. 5 Q And isn't it correct that claim 1 of the 09:55:01 6 patent doesn't say anything about an abrasion drum 7 or a tablet drum? 8 A It does not have those specific records in 1, it, no. 10 Q And in fact, the entire '777 patent does 09:55:12 11 not have any reference to an abrasion drum or a tablet drum; right? 13 A I don't recall it saying those words, no. 14 Q In fact, it doesn't say anything about the type of drum to be used for the friability test of drum to be used for the friability test of drum the the reference to the ATP friability could a naywhere in the '777 patent; right? 18 A Yes, I have. 29 Q And when I say "patent," I'm referring to the patent in suit, which is U.S. Patent No. 573777; 09:54:44 21 CEA Yes. 22 A Yes. 23 Q So you've basically cut and pasted claim 1 24 from the patent inso your notebook; orrect? 25 A That is correct. 26 Q And you did that as a point of reference 3 for the tests that you were going to conduct; right? 4 A Yes. 5 Q And sin't it correct that claim 1 of the 09:55:01 5 patent doesn't say anything about an abrasion drum or a tablet drum; right? 2 A Yes. 3 Yes. 4 Yes. 5 Q And in fact, the entire '777 patent does 09:55:12 5 or the tests that you were ference to the abrasion drum or a tablet drum; right? 3 A I don't recall it saying those words, no. 4 Q In fact, it doesn't say anything about the type of drum to be used in the Erw	13	performed in this case on SPI Pharma's Mannogem EZ	13	Q Going back to Defendant's Exhibit 39 on
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or a tablet drum? A It does not have those specific records in it, no. Q And in fact, the entire '777 patent does 09:55:12 not have any reference to an abrasion drum or a tablet drum; right? A I don't recall it saying those words, no. Q In fact, it doesn't say anything about the type of drum to be used for the friability test 09:55:28 A I'm not 100 percent sure. It's possible that the reference to the TAP friabulator could contain a reference to the abrasion drum, but I don't know that for sure. Q Okay. Let me hand you a copy of the patent in suit, then, please. I believe it's been 7 it, or I can try and help you find the reference to the Erweka TAP friabilimeter. I have it in column the the Erweka TAP friabilimeter. I have it in column to be used time column on the Erweka TAP friabilimeter. I have it in column on the Erweka TAP friabilimeter. I have it in column on the Erweka TAP friabilimeter. I have it in column on the Erweka TAP friabilimeter. I have it in column on the Erweka TAP friabilimeter. I have it in column on the Erweka TAP friabilimeter. I have it in column on the Erweka TAP friabilimeter. I have it in column on the Erweka TAP friabilimeter. I have it in column on the Erweka TAP friabilimeter. I have it in column on the Erweka TAP friabilimeter. I have it in column on the Erweka Pyes. Q Is that what you were referring to in your previous answer? A Yes. Q Take a moment to read that paragraph, and just tell me when you're finished, please. 09:57:11 A Yes, I'm finished. Q All right. And isn't it correct that in that paragraph, there is no reference to any particular type of drum to be used in the Erweka friabilimeter? O Okay. Let me hand you a copy of the particular type of drum to be used in the Erweka of friabilimeter. A I'm not sure about that. It doesn't say abrasion. It doesn't say ublet drum. But it does	!			•
8 A It does not have those specific records in 9 it, no. 10 Q And in fact, the entire '777 patent does 09:55:12 11 not have any reference to an abrasion drum or a 12 tablet drum; right? 13 A I don't recall it saying those words, no. 14 Q In fact, it doesn't say anything about the 15 type of drum to be used for the friability test 09:55:28 16 A Yes. 17 A I'm not 100 percent sure. It's possible that the reference to the TAP friabulator could 19 contain a reference to the abrasion drum, but I 20 don't know that for sure. 09:55:48 10 A Yes, I see that. 09:56:59 11 Q Is that what you were referring to in your previous answer? 12 A Yes. 13 A Yes. 14 Q Take a moment to read that paragraph, and just tell me when you're finished, please. 09:57:11 16 A Yes, I'm finished. 17 Q All right. And isn't it correct that in that paragraph, there is no reference to any particular type of drum to be used in the Erweka friabilimeter? 09:57:43 16 Q Okay. Let me hand you a copy of the patent in suit, then, please. I believe it's been 22 abrasion. It doesn't say ublet drum. But it does	1			
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type of drum to be used for the friability test 09:55:28 15 just tell me when you're finished, please. 09:57:11 16 anywhere in the '777 patent; right? 16 A Yes, I'm finished. 17 Q All right. And isn't it correct that in 18 that the reference to the TAP friabulator could 18 that paragraph, there is no reference to any 19 contain a reference to the abrasion drum, but I 19 particular type of drum to be used in the Erweka 19 particular type of drum to be used in the Erweka 10 prize 10 prize 10 prize 11 prize 12 patent in suit, then, please. I believe it's been 12 abrasion. It doesn't say mblet drum. But it does	1		1	
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21 Q Okay. Let me hand you a copy of the 22 patent in suit, then, please. I believe it's been 22 abrasion. It doesn't say tablet drum. But it does		,	Į.	
22 patent in suit, then, please. I believe it's been 22 abrasion. It doesn't say tablet drum. But it does	21		21	
	22		22	•
1 proviously market, well, we re going to mark it 1 reference something cance a crushing channel. As I	23	previously marked. Well, we're going to mark it	23	reference something called a crushing chamber. As I
24 again. I'll have the reporter mark this as 24 said before, a tablet drum is specifically	24		24	-
25 Defendant's Exhibit 40. 09:56:05 25 engineered, was designed to measure the ability of 09:57:55	25		25	
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	1 HARRY BRITTAIN
	2 appropriate drum is an abrasion drum.
	3 O Where does it say that?
	4 A It's through the use of the
1 1 1 1 1 00-FR-141	5 words "crushing chamber" of this what I will call 09:59:41
5 introduction of steel balls, there's no doubt that 09:58:14 6 in an abrasion drum through the tumbling there will	5 friabulator. It's the American expression.
7 be abrasion and crushing. I don't when I see the	7 Q So the patent doesn't say that; correct?
8 word "crushing chamber," it does not bring to mind a	8 You're inferring it from the use of the
9 tablet drum. I think one reading this would look at	9 words "crushing chamber"; correct?.
10 that and say, first of all, that there's no mention 09:58:38	10 A Yes. That's what I said earlier. 09:59:53
11 in here of testing tablets.	11 Q What's a Erweka TAP friabilimeter?
12 So I don't think one reading this would	12 A Erweka is the company name, and I'm not
13 think of using a tablet drum. I think they would be	13 totally familiar with the nomenclature of their
14 led to use an abrasion drum. But it doesn't say the	14 different units. The Erweka instrument is - it's
15 word "abrasion." In that, you're correct. 09:58:56	15 really just a rotating motor. All friabulators are 10:00:13
16 Q What is your basis for saying you think	16 rotating motors, and the important part of the
17 that?	17 instrument is the drum.
18 A Well, it's my experience working in	Now, whether TAP is a specific model that
19 physical characterization of pharmaceutical solids	19 they sell or sold with an abrasion drum, that, I
20 over the past now it's more than 20 years. 09:59:11	20 don't know. I know Erweka makes all types of 10:00:34
21 Q So your position is that the use of the	21 different drums, and probably as time evolved,
22 word "crushing chamber" instructs someone of	22 they've made additional ones. There are some
23 ordinary skill not to use a tablet drum?	23 models, probably, with a single drum.
24 A I don't know that it says not to use a	There's some models that let you perform They have dual drums. 10:00:4
25 tablet drum. I think what it says is that the 09:59:32	2.5 two measurements are same.
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Page 20	Page 21
1 HARRY BRITTAIN	1 HARRY BRITTAIN
2 There are other models — I'm not sure Erweka makes	2 the patent specification.
3 them where you can actually stack multiple drums	3 Q Oh, really? Have you spoken to the
4 on the same spindle. All of these would have,	4 inventors?
5 perhaps, different nomenclatures. 10:00:59	5 A No. 10:02:08
6 Q Have you ever tried to find an Erweka TAP	6 Q Have you read their depositions?
7 friabilimeter?	7 A I'm trying to - I'm not sure. I might
8 A I looked on their current Web site once,	B have, but I'm not sure.
9 and the TAP is not listed on their current Web site.	9 Q Let me ask you, in this case, you've been
10 Q And the fact is, there is no such thing as 10:01:16	1 20 I CEMINGS AS AN CAPOLLY IS ASSET TO SECOND
11 an Erweka TAP friabilimeter; correct?	11 A Yes. 12 Q Have you been provided with the
12 A I don't know that, no.	Q Have you been provided with the 13 depositions of the inventors?
13 Q You've never heard of one before, have	14 A I think I have. That's what I'm trying to
14 you?	15 remember. 10:02:39
Tit to the Timester has T	16 Q Have you been provided with depositions of
6.3	17 anyone else besides the two inventors?
71 1 1004 T 1-14 l	18 A Yes, I have.
The second state of the se	19 Q And so are you aware of any evidence that
20 could have had a TAP. It seems to me if the authors 10:01:4	1
1 DO COMIC METO NOW - AT MIT THE TOTAL OF TH	21 to them at the time of this patent application
21 of the patent wrote "Erweka TAP," they must have had	
21 of the patent wrote "Erweka TAP," they must have had 22 a Erweka TAP.	22 something called an Erweka TAP friabilimeter?
22 a Erweka TAP.	 something called an Erweka TAP friabilimeter? A I haven't seen such evidence, no.
22 a Erweka TAP.	 something called an Erweka TAP friabilimeter? A I haven't seen such evidence, no. Q Because no evidence exists to your
22 a Erweka TAP. 23 Q So you're completely speculating on that;	 something called an Erweka TAP friabilimeter? A I haven't seen such evidence, no.

EXHIBIT B

FILED SEPARATELY UNDER SEAL

EXHIBIT C

FILED SEPARATELY UNDER SEAL